

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 17. TRANSPORTATION

#### CHAPTER 4. DEPARTMENT OF TRANSPORTATION

#### TITLE, REGISTRATION, AND DRIVER LICENSES

#### PREAMBLE

- 1. Sections affected:** **Rulemaking Action:**  
R17-4-508 Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 28-366  
Implementing statutes: A.R.S. §§ 28-3051 and 28-3223
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 7 A.A.R. 1779, April 27, 2001  
Notice of Recodification: 7 A.A.R. 3483, August 10, 2001
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	George R. Pavia, Department Rules Supervisor
Address:	Department of Transportation, Administrative Rules Unit, Mail Drop 507M 3737 N. 7th St., Suite 160 Phoenix, AZ 85014-5017
Telephone:	(602) 712-8446
Fax:	(602) 241-1624
E-mail:	gpavia@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and other agency rulemaking matters:  
[www.dot.state.az.us/about/rules](http://www.dot.state.az.us/about/rules).
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**  
R17-4-508 contains the medical standards for commercial motor vehicle drivers. This rulemaking action arises from a five-year review report approved by the Governor's Regulatory Review Council on December 7, 1999 (F-99-1202). The Department plans to update the rule and revise it for clarity.  
  
Note: Since the initiation of rulemaking on this Section, the agency has recodified 17 A.A.C. The Section was formerly designated R17-4-802.

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**6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The agency's statistics for an average year show that approximately 500 commercial driver licenses (CDLs) are suspended/denied/revoked for actually failing to meet federal commercial driver physical qualifications. By contrast, approximately 11,500 are suspended for mere failure to submit USDOT physical examination forms to the agency. Per examination costs to the driver-applicant are minimal. CDL reinstatement is immediate upon driver submission of appropriate physical examination documentation. Agency cost per case is minimal to ensure adequate compliance with 49 CFR 391 standards. Collectively, however, the benefits in motorist safety and commercial driver health standards integrity are substantial to the citizens and business entities of Arizona.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Interested persons may contact the Department official listed in item #4 regarding the economic, small business, and consumer impact statement.

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No public hearing is planned for this rulemaking. Oral comments and oral requests for a public hearing may be made Monday through Friday, 8:00 a.m. to 4:30 p.m., at the phone number in item #4. Written comments may also be sent to address in item #4. All comments must be received by 4:30 p.m. on Wednesday, November 7, 2001, at which time the public record will close.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION**

**TITLE, REGISTRATION, AND DRIVER LICENSES**

**ARTICLE 5. SAFETY**

Section

R17-4-508. Physical Qualifications for Commercial Motor Vehicle Drivers

**ARTICLE 5. SAFETY**

**R17-4-508. Physical Qualifications for Commercial Motor Vehicle Drivers**

**A. Definitions.**

1. "Commercial Motor Vehicle" has the same meaning as set forth in A.R.S. § 28-402.
2. "Division" means the Motor Vehicle Division of the Arizona Department of Transportation.
3. "Physical qualifications" means ~~those physical qualifications the driver qualification standards set forth in prescribed under 49 CFR § 391 as adopted in R17-4-435 and R17-4-435.02 incorporated by reference under R17-5-202 and R17-5-204.~~

**B. Requirements.**

Every Arizona-licensed driver operating a commercial motor vehicle shall:

1. Meet the ~~physical qualifications set forth in 49 CFR as adopted in R17-4-435 and R17-4-435.02, and physical qualifications;~~

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2. ~~Have~~ Keep an original or copy of a current medical examination certificate as required by 49 CFR § 391 ~~as adopted in R17-4-435 and R17-4-435.02 incorporated by reference under R17-5-202 and R17-5-204~~ in the vehicle and available to law enforcement officers upon request; ~~and~~
  3. Notify the Division if the person develops a condition that would cause the person not to meet the physical qualifications within five days of the occurrence or as soon as the condition allows.
- C.** ~~Failure to meet or maintain physical qualifications in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02.~~
1. ~~No person shall be issued issue a Class A, B, or C license if that person fails to meet physical qualifications in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02.~~
  2. ~~A person who has been issued a Class A, B, or C license who subsequently fails to maintain physical qualifications in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02 shall notify the Division of the condition within 5 days of the occurrence or as soon as the condition allows.~~
  3. ~~A failure to maintain physical qualifications in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02 shall be deemed to cause such a danger to the public health, safety, and welfare that it is imperatively required that the Division take emergency action. Therefore, the Division shall summarily suspend and revoke the licensee's Class A, B, or C license by 5:00 p.m. on the next business day after notification of the condition.~~
  4. ~~If the written medical examination report fails to establish whether or not physical qualifications, in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02, have been met, the incomplete report shall be returned to the applicant or licensee by mail to the address provided to the Division. The applicant or commercial licensee shall be notified in writing by 5:00 p.m. the next business day from the date of determination that additional information is required. If the requested information is not received within 30 days from the date of the notice, the Division shall summarily suspend and revoke by 5:00 p.m. the next business day the Class A, B, or C license issued to the licensee or deny issuance to the applicant.~~
  5. ~~Upon summarily suspending the Class A, B, or C license for failure to maintain physical qualifications in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02 or failure to submit a complete medical examination report, the Division shall notify the person by mail of the licensing action, within three business days from the date of action to the person's address of record.~~
- D.** ~~Hearings and appeals.~~
1. ~~Where licensing actions have been taken adverse to the licensee or applicant pursuant to this rule, the licensee or applicant may request a hearing with the Executive Hearing Office within 15 days from the date of the notice of the licensing action.~~
  2. ~~All hearings and appeal procedures shall be in accordance with Article 9 of this Chapter.~~
- C.** If a written medical examination report fails to establish whether the person meets physical qualifications, the Division shall:
1. Return the report to the person by mail to the address provided to the Division;
  2. Notify the person in writing by 5:00 p.m. the next business day from the date of determination that additional information is required; and
  3. Suspend the person's license or deny the person's application if the requested information is not received with 30 days from the date of the notice.
- D.** The Division shall not issue a Class A, B, or C license to a person failing to meet physical qualifications.
- E.** The Division shall revoke a person's Class A, B, or C license by 5:00 p.m. on the next business day upon notification that the person no longer meets physical qualifications.
- E.** Notification and administrative hearings.
1. Upon suspending a person's Class A, B, or C license for failure to maintain physical qualifications, the Division shall notify the person by mail sent to the person's address of record within 15 business days from the date of suspension.
  2. Upon license denial, suspension, or revocation under this Section, a person may request a hearing according to procedures prescribed under 17 A.A.C. Chapter 1, Article 5.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 17. TRANSPORTATION**

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION  
COMMERCIAL PROGRAMS**

**PREAMBLE**

- 1. Sections affected:** **Rulemaking Action:**  
R17-5-408 New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 28-366  
Implementing statute: A.R.S. §§ 28-4538 and 28-4554
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 7 A.A.R. 3615, August 17, 2001
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Ellen Damron, Rules Analyst  
Address: Department of Transportation  
Administrative Rules Unit, Mail Drop 507M  
3737 N. 7th St., Suite 160  
Phoenix, AZ 85014-5017  
Telephone: (602) 712-6722  
Fax: (602) 241-1624  
E-mail: edamron@dot.state.az.us  
  
Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters:  
[www.dot.state.az.us/about/rules](http://www.dot.state.az.us/about/rules).
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**  
This rule addresses suspensions for either dealer and manufacturer license plates, and temporary registration plate "TRP" issue-authority suspensions upon notification of statutory violations as prescribed in A.R.S. §§ 28-4538 and 28-4554, and with changes prescribed in Laws 2001. The appeals process for these suspensions is provided as prescribed in 17 A.A.C. 1, Article 5. This rule will incorporate the requirements of both the Secretary of State and the Governor's Regulatory Review Council for language that is clear, concise, and understandable.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**  
None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**  
Suspensions impact the ability of a dealer and manufacturer to use license plates either partially or fully limit their business objectives for three months upon notification of a violation prescribed by A.R.S. § 28-4538. When there is notification and suspension, as prescribed by A.R.S. § 28-4554, of a motor vehicle business' ability to issue a Temporary Registration Plate (TRP), there is a potentially significant economic impact to the business.
- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**  
Name: Ellen Damron, Rules Analyst Brenda Oddy, Dealer Licensing Manager

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Address:	Department of Transportation Administrative Rules Unit, Mail Drop 507M 3737 N. 7th St., Suite 160 Phoenix, AZ 85014-5017	Department of Transportation Motor Vehicle Division 2739 E. Washington Phoenix, AZ 85034
Telephone:	(602) 712-6722	(602) 712-7975
Fax:	(602) 241-1624	(602) 712-3268
E-mail:	edamron@dot.state.az.us	boddy@dot.state.az.us

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: October 10, 2001

Time: 2:00 p.m.

Locations:

Flagstaff	Phoenix	Tucson
ADOT District Office Board Room 1801 S. Milton Rd. Flagstaff, AZ 86001	ADOT Headquarters Conference Room, 186 206 S. 17th Ave. Phoenix, AZ 85007	ADOT District Office Board Room 1221 S. 2nd Ave. Tucson, AZ 85713

Nature: Video Conference

Closure: Additional oral or written comments may be made to the analyst, listed in item #4 of this proposed rulemaking, until 4:30 p.m., October 29, 2001 at which time the rulemaking will close.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 5. DEPARTMENT TRANSPORTATION**

**COMMERCIAL PROGRAMS**

**ARTICLE 4. DEALERS**

Section

R17-5-408.      Suspension. Dealer-Manufacturer Plate: Temporary Registration Plate "TRP" Issue Authority; Hearing

**ARTICLE 4. DEALERS**

**R17-5-408.**      **Suspension. Dealer-Manufacturer Plate: Temporary Registration Plate "TRP" Issue Authority; Hearing**

**A.** Dealer-manufacturer license plate suspension. After determining a violation of A.R.S. §§ 28-4532 through 28-4538, 28-4540, or 28-4544, the Division shall upon notification suspend any applicable dealer-manufacturer's license plate for three months.

**B.** TRP issue-authority suspension. If a dealer fails to comply with provision prescribed under with A.R.S. §§ 28-4546 through 28-4553, the Division shall upon notification suspend the dealer's authority to issue a TRP.

**C.** Upon receipt of a suspension notice under this Section, a dealer or manufacturer may request a hearing as prescribed under 17 A.A.C. Chapter 1, Article 5.